

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KALOMA CARDWELL,

Plaintiff,

v.

DAVIS POLK & WARDWELL LLP,
THOMAS REID, JOHN BICK, WILLIAM
CHUDD, SOPHIA HUDSON, HAROLD
BIRNBAUM, DANIEL BRASS, BRIAN
WOLFE, and JOHN BUTLER,

Defendants.

19 Civ. 10256 (GHW)

**DECLARATION OF SUSANNA BUERGEL IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO
SERVE UNTIMELY DISCOVERY**

I, Susanna Buergel, declare pursuant to 28 U.S.C. § 1746 that:

1. I am a partner at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss"), 1285 Avenue of the Americas, New York, New York 10019, counsel for defendants Davis Polk & Wardwell LLP ("Davis Polk"), John Bick, Harold Birnbaum, Daniel Brass, John Butler, William Chudd, Sophia Hudson, Thomas Reid, and Brian Wolfe.

2. I submit this declaration in support of defendants' opposition to plaintiff's motion to serve untimely discovery.

3. On January 18, 2020, plaintiff's counsel consented to receiving "discovery requests" by email. *See* Exhibit B to this Declaration.

4. On March 2, 2020, in accordance with the Court's December 20, 2019 scheduling order (the "Order"), my colleague Marissa Doran served defendants' first set of requests for production and interrogatories by email. *See* Exhibit C to this Declaration. Plaintiff did not serve any requests or interrogatories at that time.

5. On June 5, 2020, I emailed plaintiff's counsel seeking to schedule a meet and confer call. *See* Exhibit D to this Declaration. Plaintiff's counsel consented, and the call occurred on June 10, 2020.

6. On June 10, 2020, I, along with my colleagues Bruce Birenboim and Marissa Doran, met and conferred with plaintiff's counsel, Messrs. Jeffries and Restituyo, for approximately half an hour by telephone. During the call, Mr. Restituyo said that defendants had a "right to receive" the materials requested on March 2; that "there was no compliance" with the Court's Order; and that there was "no excuse" for plaintiff's failures to comply. My colleagues and I explained that defendants could not accept plaintiff's proposal outlined in a letter attached to plaintiff's counsel's May 18 email. We also requested that plaintiff's responses to defendants' outstanding discovery be sent immediately.

7. On June 26, 2020, I and my colleagues, Bruce Birenboim and Marissa Doran, again met and conferred with plaintiff's counsel for approximately half an hour by telephone. Plaintiff's counsel initially attributed plaintiff's failures to comply with his discovery obligations to the COVID-19 crisis, but after being reminded that they predated the crisis, said that plaintiff's failures to comply with his discovery obligations had had a "material effect" on the litigation and that any purported explanation for these failures, and the corresponding lack of communication, would "be an excuse."

8. Attached to this declaration are true and correct copies of documents referenced in defendants' memorandum of law in support of their opposition to plaintiff's motion to serve untimely discovery:

Exhibit A: December 9, 2019 email from plaintiff's counsel to defendants' counsel representing that they were "meeting with [their] client [the following day] to discuss," *inter alia*, a "change in date" in the proposed draft scheduling order.

Exhibit B: January 18, 2020 email exchange between plaintiff's counsel and defendants' counsel, where defendants' counsel sought and plaintiff's counsel granted consent "to exchange initial disclosures" and to serve "discovery exchanges (e.g. requests for production, interrogatories, and production letters)" by email.

Exhibit C: March 2, 2020 email from defendants' counsel to plaintiff's counsel serving defendants' first set of requests for production and interrogatories "pursuant to Judge Woods's December 20, 2019 Scheduling Order."

Exhibit D: June 5, 2020 email from defendants' counsel to plaintiff's counsel seeking to schedule a meet and confer call and plaintiff's counsel's reply on June 8, 2020. The call took place on June 10, 2020.

9. I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 16, 2020
New York, New York

By: /s/ Susanna Buerger
Susanna Buerger

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
sbuerger@paulweiss.com
Attorney for Defendants